



Medical Research – Current Challenges in SR&ED

CURRENT CRA CLIMATE



- CRA is currently attempting to deny virtually all claims by MPCs who are affiliated with universities and hospitals
- Two pronged strategy:
 1. Primary Position: SR&ED is NOT being carried out on behalf of MPCs, but on behalf of hospitals/universities by Dr's as individuals
 2. Secondary Position: APP/AFP Funding is Government Assistance with respect to SR&ED

ISSUES AFFECTING MPCs



- Parties affected by current changes to CRA interpretations are typically:
 - Clinician scientists who carry out research alongside their work providing clinical care to patients
 - Clinical fees flow in to a Medical Professional Corporation (MPC)
 - Doctors are paid by the MPC, either as a contractor or employee
 - These salary and contract costs are claimed; the way these are allocated is highly dependent on practice plans and other agreements that govern responsibilities and compensation for owners/employees of the MPC

New SR&ED Director General

May 2018



Jason Charron

Director General of the Scientific Research and
Experimental Development Directorate (SR&ED)

Status of medical issues May 9, 2019

- Direction paper in process
- Expected release in near future
- In interim the new SR&ED Director General provided a May 2, 2019 summary of CRA positions.

Guidelines from SR&ED Director General – May 2, 2019

- Directly engaged – what is the CRA’s position?

As the legislation allows, “To claim SR&ED tax incentives, the Income Tax Act requires that the SR&ED work must be directly undertaken by the taxpayer or undertaken on behalf of another party and have resulted in expenditures.” Physicians and corporations (MPCs, HCEs, etc.) are distinct legal entities for tax purposes.

As you are aware, the medical guidance document key point is that for this community the CRA recognizes that several parties can collaborate to carry out the medical research, and determining the payer and performer can be challenging. We also recognize that we must have reasonable approaches for identifying distinct work. However, performers doing eligible research work can submit a SR&ED claim if they incurred their own eligible expenses and after reducing the qualified SR&ED expenditures for ITC purposes by compensation received or receivable.

CRA Position: SR&ED Not Performed By or On Behalf of MPCs



- 2016 denial letter from Toronto Centre:
 - “there is no contract between [the hospital] and [MPC]. The [doctors], are appointed by [the hospital] to perform their duties as [doctors] and are affiliated with the [university]. In addition, the [doctors] are expected, if not required to do research. In doing research, they are fulfilling their obligations and/or expectations with aforesaid University and/or Hospital.”
 - “our position is that the [doctors] are the ones who are undertaking the SR&ED and their work performed was in fulfilment of their appointment with [the hospital] and not [the MPC].”

CRA Position: SR&ED Not Performed By or On Behalf of MPCs



- 2017 denial letter from Montreal:
 - “Please note that a Doctor and his medical professional corporation, (MPC) are two separate entities and as such the responsibilities a Doctor may have for doing work for another health entity cannot be attributed to their medical professional corporation (MPC). In other words, if the Doctor has an obligation for doing research work for a health entity (other than the Doctor's MPC) that results from their employment, appointment, or other similar contract with this health entity, where by doing that research work the Doctor is fulfilling their obligations to that health entity, then that research work cannot be attributed to the Doctor's MPC, and in such as case the MPC would not be able to make an SR&ED claim for that research work.”

CRA Position: SR&ED Not Performed By or On Behalf of MPCs



- CRA is basing their analysis on:
 - Appointment letters: Obligation to perform research (often stated as a minimum % of a Dr's time to be spent)
 - How results are published (name of doctor, hospital/university – not MPC on paper) → have seen this even with non-academic researchers with no appointments
 - Hospital/university control over R&D (ethics board)
 - How clinical data is accessed (via hospital/university?)
 - Ownership of IP (Dr's as individuals own sole rights or share rights with hospital/university)

Analysis: SR&ED Not Performed By or On Behalf of MPCs



- How to separate R&D obligation under appointment from R&D done on behalf of MPC? Base on time spent above minimum obligation? Should not be all or nothing.
- Remuneration for R&D obligation: many doctors are not paid as employees or contractors of university/hospital for research activities – AFP/APP is the means of remuneration for this work?
- R&D as defined by hospital is not = SR&ED (ex. attending conferences, facilitation of research by others, etc.)
- Relevance of IP ownership vs. right to exploit results?
- Relevance of publication? Open source results are published by individuals while working for businesses, for example
- To what degree is hospital really directing R&D (vs. regulating it via ethics board)?

Analysis: SR&ED Not Performed By or On Behalf of MPCs



- Scenarios where MPC is directly hiring and paying fellows as T4 employees to carry out research activities on their behalf
 - Under direction of the Dr's, but have no university/hospital appointment
 - Paid by MPC
 - What happens to these costs if the project is deemed to be carried out by the doctor for the hospital/university but the MPC is paying for and directing fellows on the same projects? Joint project?

Guidelines from SR&ED Director General – May 2, 2019

- Government assistance – whether AFP or any other funding included?

This item is still under review by Rulings/Legal Services. For now, we must continue to apply the contract payment policy.

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Alternative Payment Plan (APP)/ Alternative Funding Plan (AFP)



- An additional mechanism for compensating academic physicians whose activities go well beyond treating patients
- To receive, **doctor must have medical staff appointment and university appointment**
- Per the Academic Health Science Center AFP Template Agreement, the purpose is to:
 - a) Provide Funding that recognizes the unique contributions of academic physicians;
 - b) Increase the capacity of the AHSCs to provide **Clinical Services** and **Academic Activities** in an integrated manner;
 - c) Improve the coordination and integration of the interests of the medical staff, teaching hospitals and universities;
 - d) Facilitate the recruitment and retention of the academic physicians; and
 - e) Ensure that the funding reaches academic physicians in an open and transparent manner.

AFP: Delivery Mechanism



- Funds are provided to the Academic Health Sciences Centre (Hospital)
- Funds are allocated and distributed to the various practice plans throughout the hospital by administration
- The majority of Funds (except Clinical New 75%) are allocated equally to all practice plans in the hospital, based on FTE headcount per practice plan with no direct linkage to any specific activities, research or otherwise, carried out by the members of that practice plan
- Only linkage is via appointment letters (ex. 70% clinical, 20% teaching, 10% research activities)

AFP: CRA Position



- Recent Toronto Centre decision:

“AFP Funds received are considered to be Government Assistance and would be allocated and netted against qualified expenditures for SR&ED as per the requirement of Subsection 127(18) of the Income Tax Act.

Not all AFP amounts are considered reasonable amounts in support of SR&ED, such as Recruitment Funding and Administrative Funds. The following funds should be allocated for SR&ED based on the doctor’s time allocated for research activities in his academic appointment agreement:

1. Base Clinical Funds
2. Additional Clinical Funds (clinical repair)
3. Academic Funds
4. Academic Enrichment Funding”

This position was provided under the guidance of ‘coordinator of medical files’.

AFP Analysis: Lack of Linkage



- There is no direct link from AFP funds to the SR&ED work being completed. There are a range of activities (most not SR&ED eligible and some might be) listed as to what AFP is intended for.
- Interpretation of the original funding plan (prepared by MoHLTC) has the following idealized or aggregated split of time intended for doctors participating in the AFP plans as detailed in AHSC Alternative Funding Plan Information Guide:
 - 70/30 clinical/academic; and of the academic roughly a 2/3 teaching (20% of FTE) vs 1/3 (10% of FTE) research was hoped for
 - The same requirements are reflected in Academic Appointment letters we have seen (70% clinical, 20% teaching, 10% research)
- There is no guidance or direction from the AFP or hospital body to the specific research that is to be completed.
- There is little oversight from the AFP or hospital to ensure that the total amount of R&D being completed is commensurate with payment

Current Status of National Policy on Medical SR&ED Claims



- Response to appeals on these issues as of Sep 2017:

“objections of similar issues of other taxpayers have been forwarded to the Appeals Headquarters for guidance on identified issues” and “this objection will remain in abeyance until further direction has been received from our headquarters”

- Status and timeline for resolution is unknown at this time
- No consultation with the medical community to date
- Suggested next steps for claimants: moving cases through to TCC